

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EL DORADO COUNTY CHARTER
SPECIAL EDUCATION LOCAL PLAN
AREA.

OAH CASE NO. 2013100511

ORDER GRANTING MOTION TO
DISMISS

On October 11, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming El Dorado County Charter Special Education Local Plan Area (SELPA). On October 28, 2013, the SELPA filed a Motion to Dismiss, alleging that it is not the public agency responsible for providing Student with educational services, nor has it ever provided such services. OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the

availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

In the present matter, the SELPA established that Student attends Aspire Public Schools, a charter school, which is its own local education agency and a member of the SELPA. The declaration of Amy Andersen, the SELPA's director, and the letter attached to Student's complaint establish that the SELPA was not involved in the allegations alleged in the complaint regarding the purported change of Student's qualifying special education category and failure to provide an independent educational evaluation as those decisions were made by Aspire Public Schools. Accordingly, Student's complaint is dismissed as the SELPA is not a responsible public agency in this matter.

ORDER

The SELPA's Motion to Dismiss is granted. The matter is dismissed.

Dated: November 4, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings